IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

RSA.No. 768 of 2007()

AS.74/2006 of SUB COURT,NEYYATTINKARA
OS.185/2004 of PRL.M.C.,NEYYATTINKARA

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: PETITIONERS/APPELLANTS

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1. MANOHARAN, S/O. VELUKUTTY, AGED 43,
EKKIPPARA PUTHEN VEEDU,
MULAMOODU JUNCTION, POOVACHAL NEDUMANGADU TALUK,

2. SREEJA, D/O. NAGAMMA, AGED 34,
THOPPUVILAKATHU VEEDU,KAVALAKULAM DESOM,
NEYYATINKARA VILLAGE.

BY ADV. SRI.R.GOPAN

RESPONDENTS: RESPONDENTS

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1. G. DASAMMA, D/O. GRACY, AGED 72 YEARS,
PUTHUVIL PUTHEN VEEDU, ETHUKARAVILA
CHEMBOOR, OTTASEKHARAMANGALAM FROM
KODENGAVILA THOPPUVILA PUTHEN VEEDU,
KAVALAKULAM DESOM, NEYYATINKARA VILLAGE.

2. NIRMALA,D/O. GRACY, AGED 70
NIRMALA BHAVAN, THEERCHAKUZHI,
MARUTHANOOR DESOM, FROM DOO.DO..

3. BABU,S/O. KOCHAPPI, AGED 58
THOPPUVILA VEEDU, KAVALAKULAM DESOM,
NEYYATTINKARA VILLAGE.

4. G. KAMALAM DO/. GRACY, AGED 56
MELEVILA VEEDU, PONGUMMOODU, KUVELASSERI.

5. G. RAJAMMA, D/O. GRACY, AGED 54,
MAVARATHALA VEEDU, CHENKAL DESOM AND VILLAGE.

6. VASANTHA, AGED 32, VIJI NIVAS,

KUNNIYODE, KUNNANAD,
OTTASEKHARAMANGALAM VILLAGE
(LR'S OF 3RD PLAINTIFF)

7. NADESAN,S/O. VELUKUTTY, AGED 47 YEARS,
PALLIVILA VEEDU, NEAR KOTTAPPURAM,
C.S.I. CHURCH, ATHIYANNOOR DESOM AND VILLAGE.

8. SABU, S/O. VELUKUTTY,AGED 40
KODANGAVILA, THOPPUVILAKATHU VEEDU,
KAVALAKULAM DESOM, NEYYATINKARA VILLAGE.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.1589/2007 IN R.S.A.NO.768/2007

6.9.07 Dismissed Sd/- M.Sasidharan Nambiar
Judge

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO.768 OF 2007

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Dated this the 6th day of September, 2007

JUDGMENT

Defendants 2 and 4 in O.S.185/2004 on the file of Munsiff Court, Neyyattinkara are appellants.Respondents 1 to 6 are plaintiffs and other respondents are other defendants. Respondents instituted the suit seeking a decree for partition contending that plaint schedule property originally belonged to father ofplaintiffs Daveed Kochappi father of respondents/plaintiffs and he filed a petition for purchase of kudikidappu before the Land Tribunal, Vellarada and during the pendency of proceedings, Daveed Kochappi died and thereafter Gracy mother of plaintiffs got herself impleaded and later the case was compromised and a purchase certificate was obtained in the name of Gracy and appellants and respondents 7 and 8 who are defendants 1 to 4 are the legal heirs of deceased Ponnamma, sister of respondents 1 to 5

and deceased third plaintiff and Gracy died in 1991 and respondents 1 to 7 are entitled to 6 out of 8 shares in the plaint schedule property and plaintiffs and defendants are in joint possession of the property and therefore they are entitled to get their shares separated. Appellants in their written statement contended that Daveed Kochappi had no right in the plaint schedule property and only after marrying Gracy, Kochappi started living in the property and he had no kudikidappu right over the property and Gracy alone had kudikidappu right and in O.A.552/1970 purchase certificate was issued in the name of Gracy and on the strength of the purchase certificate Gracy is the absolute owner of the property and she transferred the property in favour of first appellant who is the second defendant, as per sale deed No.258/92 for valuable consideration and he is a bona fide purchaser and has effected mutation and has been paying tax and therefore respondents 1 to 6 are not entitled to claim any share in the plaint schedule

property and suit is only to be dismissed. It was also contended that 3rd respondent/4th plaintiff had filed an application for kudikidappu right as O.A.15/2004 and that application was dismissed and as Gracy sold her right during her life time she had no right over the property which would devolve after her death and therefore the suit is only to be dismissed.

2. Learned Munsiff on evidence of PW1, DW1 and DW2, Exts. A1 to A3, B1 to B9 granted a preliminary decree holding that Kochappi was the original kudikidappukaran and he filed O.A.552/1970 for purchase of kudikidappu right and Gracygot herself impleaded as legal heir of Kochappi and obtained purchase certificate in that capacity and it shall enure to the benefit of all the legal heirs of Kochappi. Relying on the decision of this court in Moothorakutty v. Chiruthakutty(1995 (1) KLT 251) it was held that Ext.B1 purchase certificate shall enure to the benefit of Gracy as well as plaintiffs and legal heirs of deceased Ponnamma the sister of

plaintiffs. Learned Munsiff also found that as per Ext.B2 sale deed executed Gracy, her 1/8 share in the property was transferred and therefore apart from the share of Ponnamma, appellants are entitled to the share of Gracy also and plaintiffs are entitled to get remaining 6/8 shares. Preliminary decree was passed. Appellants challenged the decree and judgment before Sub Court, Neyyattinkara in A.S.74/2006. Learned Sub Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellants was heard.

4. The argument of learned counsel was that Kochappi was not a kudikidappukaran and it was specifically pleaded by appellants that the hut was constructed by father of Gracy and Land Tribunal granted Ext.B1 purchase certificate to Gracy alone and not to the legal heirs of Kochappi and therefore Gracy was the absolute owner of the

property by virtue of Ext.B1 and under Ext.B2 sale deed, that right was purchased by first appellant and therefore on the death of Gracy, no right over the property was devolved on her children and the preliminary decree granted by courts below is unsustainable. Learned counsel also argued that even if properties are available for partition, the share computed by courts below is incorrect, as on the death of Kochappi, under Indian Succession Act, 1/3 share would devolve on the widow and under Ext.B2 first appellant is entitled to that share apart from the share, due to deceased Ponnamma. Learned counsel further argued that Ext.B2 sale deed is not a void sale deed and Gracy is entitled to transfer her right in the property and without getting Ext.B2 sale deed set aside, plaintiffs are not entitled to the decree sought for.

5. On hearing the learned counsel, I do not find any substantial questions of law involved in the appeal.

6. It is not disputed that the kudikidappu application pursuant to which Ext.B1 was granted, was filed by Kochappi. It is only after the death of Kochappi, Gracy his wife was impleaded as his legal heir and continued to prosecute the O.A. Proceedings. Ext.B1 purchase certificate was granted in that O.A. Though it was granted in the name of Gracy, courts below on appreciating the evidence found that kudikidappu right granted in favour of Gracy under Ext.B1 shall enure to the benefit of all the legal heirs. The principle is correct in view of the decision of this court in Moothorakutty's case (supra).

7. Though learned counsel argued that computation of shares is not correct, I cannot agree with the said submission also. Though Kochappi was a kudikidappukaran, on his death that kudikidappu right devolved on all the legal heirs including the widow and children. Till the kudikidappu was purchased it cannot be said that Kochappi was the owner of the plaint schedule

property. Till the purchase he has only the status of kudikidappukaran. He was entitled to purchase the kudikidappu. As it was not purchased during his life time it was that status which devolved on his legal heirs. Therefore widow is not entitled to claim 1/3rd share. Instead she is only entitled to get share along with the children who are also entitled to equal share. As found by courts below, in view of Ext.B1 purchase certificate issued by the Land Tribunal and under Ext.B2 sale deed that right was transferred to first appellant, first appellant is entitled to the share of Gracy. Along with that share, children of Ponnamma are entitled to the share due to Ponnamma. Courts below on the evidence rightly found that appellants are entitled to only the 1/8 share of Gracy along with the 1/8 share of deceased Ponnamma and plaintiffs are entitled to the remaining 6/8 share.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006